

Local 307, National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO (U.S. Postal Service) and Vicky Lynn Kaseta. Case 7-CB-12192(P)

May 7, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH
AND ACOSTA

On December 26, 2000, Administrative Law Judge C. Richard Miserendino issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order and to adopt the recommended Order as modified.¹

We affirm the judge's finding that the Respondent violated Section 8(b)(1)(A) when it failed to inform Kaseta of the time of her grievance hearing.² We reverse the judge's finding, however, that the Respondent also violated Section 8(b)(1)(A) by charging Kaseta for photocopies of her union files.

The facts relevant to the photocopies finding may be briefly stated. Kaseta sent the Union a letter dated August 22, 1999, requesting copies of: (1) her union files for the past 6 months, (2) a December 9, 1998 Letter of Warning, and (3) an April 19, 1999 Letter of Suspension. Kaseta had made previous requests for copies of her union files in February 1997, and in January 1999. The earlier copies were provided to her at no cost.

One month later, when Kaseta still had not received the requested copies, she sent the Union a second letter dated September 20, reiterating her request. Kaseta then sent a third letter, dated October 4, 1999, complaining that she still had not received the copies and revising her request to include all grievances, complaints, notes, and memos in her files since December 1, 1998. Union President Glenn Shelton responded to both letters, advis-

ing Kaseta that her files were being compiled and that she would be notified when they were ready.

On October 13, 1999, Shelton sent Kaseta a letter explaining that her files were compiled and ready for inspection, and that copies would cost \$.10 a page. Shelton testified that there would be a charge for the copies because he had been told that Kaseta was making a duplicative request for copies of her union files, that this was the first time anyone had made a duplicative request for copies, and that he believed that anyone else who made a duplicative request for copies would have received the same response, i.e., that the copies would cost \$.10 a page.

In finding the imposition of charges for the photocopies of Kaseta's union files unlawful, the judge observed that there was no evidence that other unit members had ever been charged for copies of their union files, nor was there evidence that the Union had an established policy of charging for duplicative copy requests. The judge further observed that, even if the Union had such a policy, Kaseta's requests were not duplicative of earlier ones.

A union breaches its duty of fair representation when its conduct towards a unit member is arbitrary, discriminatory, or in bad faith. The review of a union's performance must be "highly deferential" and mere negligence is not a breach of the duty. See *Letter Carriers Branch 529*, 319 NLRB 879, 881 (1995) (citing *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *Airline Pilots Assn. v. O'Neill*, 499 U.S. 65, 78 (1991)). A union's conduct is arbitrary where, in light of the legal and factual landscape at the time, its behavior is so far outside the range of reasonableness as to be irrational. *Id.* Contrary to the judge, we find that the Union's action of charging Kaseta for what it believed were duplicative copies of her union files, and imposing the copying charge without first establishing a formal policy for imposing such charges, did not breach its duty of fair representation. Any mistake by the Union regarding whether Kaseta's request was for duplicative copies was negligence, but not more. Furthermore, the Union's act of imposing copying charges on the first person that it believed had requested duplicative copies of union files, even though it did not have a preexisting formal rule imposing charges for duplicative copies, was certainly not unreasonable. Thus, we find, contrary to the judge, that the Union's actions towards Kaseta were not arbitrary, discriminatory, or taken in bad faith, and therefore did not violate the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 307, National Postal

¹ We shall substitute a new notice with remedial language that more closely conforms to the violation found.

² In adopting the judge's finding that the Respondent's failure to inform Kaseta of the time of her grievance hearing violated Sec. 8(b)(1)(A), we do not rely on the judge's conclusion, in sec. III.H of his decision, that the "evidence supports a reasonable inference that [the] failure to notify Kaseta was willful."

The Union has filed a request that the Board supplement the record with the final decision in Kaseta's grievance. We deny the request as the final decision is irrelevant to the Board's determination in this case.

Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO (Local 307), its officers, agents, and representatives, shall take the action set forth in the Order as modified below.

1. Substitute the following for paragraph 1(a).
“(a) Refusing to inform employees of the times of their step 1 grievance meetings.”
2. Delete paragraphs 1(b) and 2(a) and (b), relettering the subsequent paragraphs.
3. Substitute the following for relettered paragraphs 2(a) and 2(b):

“(a) Within 14 days after service by the Region, post at its union offices and hiring halls in Detroit, Michigan, copies of the attached notice marked “Appendix.”²⁶ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

“(b) Furnish signed copies of the notice to the Regional Director for Region 7 for posting by the United States Postal Service (USPS), if willing, at all locations where notices to members are customarily posted.”

4. Substitute the attached notice for that of the administrative law judge.

CHAIRMAN BATTISTA, concurring.

I agree that the Respondent Union breached its duty of fair representation (DFR) by its failure to notify Kaseta of the September 30 grievance meeting. I note that she asked to be notified, and the Union failed to explain the lack of notification. The result of that meeting was that the discipline of Kaseta was upheld, albeit reduced from 14 days to 8 days. On Kaseta's complaint about exclusion, another meeting was held, attended by Kaseta. But the 8-day discipline was still imposed. The Union argues that, in Section 301 hybrid cases (alleging breach of DFR by union and breach of contract by employer), the plaintiff must show, *inter alia*, that the grievance outcome was affected by the breach of the DFR. I believe that there is wisdom in harmonizing the law of DFR in Board cases with the law of DFR in hybrid Section 301 cases. However, even accepting that principle, I note that the Union, having breached its DFR in regard to the first meeting, was the wrongdoer. It therefore had the duty to disentangle the consequences of its unlawful conduct. The Union has not shown that the result that was reached at the second meeting was not affected by the result reached

at the first meeting. Accordingly, I concur in the violation.

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to inform any unit employee of the date, time, and place of a Step I grievance meeting when that employee has specifically requested or has a right to be so informed.

LOCAL 307, NATIONAL POSTAL MAIL
HANDLERS UNION, A DIVISION OF THE
LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA, AFL-CIO (U.S. POSTAL SERVICE)

Dwight R. Kirksey, Esq., for the General Counsel.

Barbara Harvey, Esq., of Detroit, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

C. RICHARD MISERENDINO, Administrative Law Judge. This case was tried in Detroit, Michigan, on April 25 and 26, 2000. The charge was filed by Charging Party Vicky Lynn Kaseta (Kaseta) on September 17, 1999,¹ and amended on January 10, 2000. The complaint was issued on January 11, 2000, and was amended at trial. (Tr. 67, 74, 182.) It alleges that on various dates between May–October 1999, Local 307, National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO (Union) failed to represent Kaseta for unfair, arbitrary, and invidious reasons in breach of its fiduciary duty to bargaining unit employees in violation of Section 8(b)(1)(A) of the Act.

The Respondent's timely answer denied the material allegations of the complaint.²

¹ All dates are 1999, unless otherwise indicated.

² The Union moved at trial to dismiss par. 8(h) of the complaint on the grounds that the subject grievance was resolved during the grievance procedure. (Tr. 7–8.) I reserved ruling on the motion, which I now deny for the reasons stated in this decision.

The parties have been afforded a full opportunity to appear, present evidence, examine and cross-examine witnesses, and file briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits, and I find, that the Board has jurisdiction over the United States Postal Service (Postal Service) pursuant to Section 1209 of the Postal Reorganization Act.

The Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Motions to Dismiss

1. The 10(b) issue

In her brief at page 21, the Respondent's counsel argues that paragraph 8(c) of the complaint, alleging that on August 11, 1999, Chief Union Steward Georgia Butler failed to represent Kaseta in an EEO matter, is time barred by Section 10(b) of the Act. The Respondent asserts that the claim first appeared in the amended charge, which was filed on January 10, 2000, more than 6 months after date of the alleged violation.

In *Redd-I, Inc.*, 290 NLRB 1115 (1988), the Board identified certain factors for determining whether the allegations arising from a charge, which is otherwise untimely, can be added to a complaint based on their close relationship to the allegations in a timely filed charge. Under the "closely related" test, it must be determined whether the otherwise untimely allegations in the complaint (1) involve the same legal theory as the timely allegations in the charge; (2) arise from the same factual circumstances; and (3) entail the same or similar defenses by the Respondent. In assessing each of these factors, the evidence shows that the original charge filed on September 16, 1999, expressly alleges, among other things, that "the union representatives at the GWY Detroit, Michigan has (sic) knowingly refused to represent me." Thus, I find that the allegations in paragraph 8(c) of the complaint, which are based on the amended charge, relate to the same legal theory of the underlying charge. I further find that the alleged failure of Chief Union Steward Butler to represent Kaseta at the EEO matter is part of the same factual sequence addressed in the original charge, involving Union Steward Bruce Lewis and Union Steward J.C. Holmes in August 1999. Finally, I find that the Respondent's defense with respect to the otherwise untimely allegation in the amended charge is similar to the defense concerning the other alleged failures of the Union to represent Kaseta.

Accordingly, the motion to dismiss the allegations of paragraph 8(c) of the complaint is denied.

2. The duty of fair representation in the investigation of grievances

The Respondent also argues that paragraph 8(d) of the complaint, alleging that Union Steward Bruce Lewis refused to

meet with Kaseta concerning a potential grievance, should be dismissed as a matter of law because the duty of fair representation does not arise in the investigatory stages of the grievance procedure, but only at the formal grievance level. I disagree. It is well settled Board law that "a union owes all unit employees the duty of fair representation, which extends to all functions of the bargaining representative." *Letter Carriers Branch 529*, 319 NLRB 879, 881 (1995). Few could argue that it is not a function of a union steward to meet with a bargaining unit member to discuss a potential grievance against management.

In addition, I find that the Respondent's reliance on *Teamsters Local 307*, 238 NLRB 1450, 1454, (1978), is misplaced. In that case, the General Counsel argued that the Respondent did not properly act as an "advocate" for the Charging Party during an internal union hearing to investigate allegations against a union representative. Relying on *Truck Drivers, Oil Drivers, Local 705*, 209 NLRB 292 (1974), the administrative law judge reasoned that there was an implication that the "duty of advocacy" arises at the formal grievance level, not at the investigatory level. 238 NLRB at 1454. That conclusion falls far short of stating that the "duty of fair representation" does not attach until the formal grievance level. Indeed, in *Service Employees Local 579*, 229 NLRB 692 (1977), which is another case cited by administrative law judge in the *Teamsters Local 307* decision, a union representative undertook to review the personnel file of a recently discharged employee as part of the union's "investigation" of the basis for the discharge, even though a grievance had not been filed. In determining that the union acted arbitrarily in violation of Section 8(b)(1)(A) of the Act by failing to inquire into the validity of the stated reasons for the discharge, the administrative law judge particularly noted that when the union representative reviewed the discharged employee's personnel file, she undertook, intentionally or otherwise, to represent the discharged employee at step one of the grievance procedure.³ Having undertaken that responsibility, the union representative became obligated to represent the discharged employee "fully and fairly and to function as her advocate." 229 NLRB at 695.

Thus, I find that a union's duty to fully and fairly represent an employee arises at the investigatory level of a potential grievance. Accordingly, the motion to dismiss paragraph 8(d) of the complaint is denied.

3. The subsequent resolution of a grievance

The Respondent argues that paragraph 8(h), alleging that Union Steward J.C. Holmes failed to properly advise Kaseta of the date and time of a step-1 grievance meeting, should be dismissed because the step-1 meeting was redone and ultimately the discipline was rescinded. I find that adequacy of Respon-

³ In *Service Employees Local 579*, supra, the union representative steadfastly maintained that the discharged employee had told her that she did not want to file a grievance. The administrative law judge discredited the union representative's testimony and found that the union representative acted arbitrarily by not acknowledging the discharged employee's "intention" of filing a grievance. Similarly, the undisputed evidence here shows that in the early morning of August 14, 1999, Kaseta told Union Steward Lewis that she wanted to file a grievance and sought him out to do so.

dent's subsequent representation is irrelevant to the issue of whether or not Holmes acted arbitrarily in failing to keep Kaseta informed of the status of her grievance. *Steelworkers Local 3029*, 250 NLRB 813 (1980).

Accordingly, the motion to dismiss paragraph 8(d) of the complaint is denied.

B. Background

The Union represents the mail handlers employed by the Postal Service at the downtown Detroit general mail facility and the Detroit metro airport airmail facility. The current 2-year collective-bargaining agreement contains a four-step grievance procedure. (R. Exh. 34, p. 69–74.) An employee, who has a dispute with management, can file a complaint with a union steward, which becomes the underlying basis for a grievance. The employee has a right to be present at the step-1 grievance meeting, but the contract gives the local union steward the authority to settle or withdraw a grievance at the step-1 meeting. If the matter is not resolved at step 1 of the procedure, it can be appealed to step 2.

Employees do not have the right to be present at the step-2 meeting. In most cases, the local union steward attends these meetings alone and is authorized by the contract to settle or withdraw the grievance as a result of discussions or compromise at this step. If an unresolved grievance is pursued to step 3, it is handled by a regional union representative assigned by the Union's national office. Employees do not have the right to be present at the step-3 grievance meeting and under the contract the regional union representative has authority to settle or withdraw the grievance at this stage.⁴ (Tr. 261–262.)

Employees may also grieve equal employment opportunity discrimination (EEO) claims as a violation of the contract's nondiscrimination clause. (R. Exh. 34, p. 3, sec. 2.1.) Alternatively, an employee may file an administrative EEO charge under the Postal Service's internal administrative EEO procedure. Occasionally, the Union will authorize a union steward to represent an employee in the Postal Service's internal administrative EEO process in which case the Union pays for the union steward's lost worktime. If a union steward undertakes to represent an employee without authorization from the Union, which happens from time to time, it is done on a voluntary basis without compensation from the Union.

Charging Party Vicky Lynn Kaseta, a longtime employee, has worked for the Postal Service for 23 years. From 1992 to September 25, 1999,⁵ Kaseta worked as a mail handler at the downtown Detroit general mail facility. During this tenure, she was a prolific letter writer, who often followed up her missives, with grievances protesting the Postal Service's alleged failure to adhere to the contract, as well disciplinary actions taken against her. Kaseta was also openly critical of the level of representation by her local union, and eventually developed the view that the Union and management were conspiring against her. This case focuses on a series of incidents, which occurred

between May–October 1999 in which Kaseta asserts that the Union failed to properly represent her.

C. The 7-Day Suspension

On Friday, April 16, 1999, Kaseta was working on the south dock of the downtown Detroit facility loading airmail onto trucks. Welders were working nearby. The following day, she missed work due to a corneal abrasion. Over the next few days, she was treated by an eye specialist, who diagnosed her condition as an arc welding burn apparently caused by the nearby welding.

On Thursday, April 22, Kaseta told her immediate supervisor, Natalie Day, that her eye condition was work related. Day asked Kaseta to complete a workers' compensation form, but Kaseta declined stating that she had to leave to go to a doctor's appointment. The next day, Friday, April 23, Kaseta submitted the necessary form. On April 30, she received a disciplinary notice and a 7-day suspension for failing to promptly report a work related injury as required by the Postal Service Labor Relations Manual. (GC Exh. 2.)

Kaseta filed a written complaint with Union Steward J. C. Holmes, who filed a grievance protesting the disciplinary suspension notice. (Tr. 22–23.) A short time later, Holmes, Kaseta, and her immediate supervisor, Day, met for a step-1 grievance meeting, but were unable to resolve the matter to Kaseta's satisfaction. The Union pursued the grievance to step 2 without success.

At the step-3 meeting held on or about July 23, 1999, Regional Union Representative Dawson Lewis settled the case on the basis that the 7-day suspension would be removed from Kaseta's employee record on October 30, 1999, provided Kaseta incurred no infractions resulting in discipline between July 23 and October 30, 1999. (GC Exh. 4.)

One week later, Kaseta received a copy of the step-3 grievance resolution. She immediately went to see Holmes to express her dissatisfaction with the settlement. Kaseta opined that her grievance was a cut-and-dried case, which if handled properly at the local level should never have gotten to step 3. She also was upset because she was not notified about the step-2 or step-3 grievance meetings. Finally, Kaseta was upset because at the time of the grievance resolution, she had a pending grievance concerning a prior discipline and therefore thought that the prior pending discipline might ultimately trigger the 7-day suspension under the latest grievance resolution. (Tr. 34.)

D. The Sick Leave Grievance

On Friday, April 30, Kaseta gave a sick leave slip to her supervisor, Natalie Day, seeking advance approval of 8 hours of sick leave for a dental appointment on Wednesday, May 4. No medical documentation was submitted with the sick leave slip as required by the Postal Service Employee and Labor Relations Manual (ELM). (R. Exh. 36.) The next day, May 1, Kaseta asked Day about the status of her sick leave request. Day testified that she marked the leave slip "disapproved," because there was no medical documentation submitted, but told Kaseta that she would change the leave slip to "approved"

⁴ The provisions of step 4 of the grievance procedure are not implicated in this case.

⁵ On September 25, 1999, Kaseta voluntarily transferred from the downtown Detroit general mail facility to the Detroit metro airport airmail facility.

if Kaseta submitted the proper documentation before May 4. (Tr. 189.)⁶

Kaseta nevertheless complained to Union Steward Holmes. (GC Exh. 6.) She was concerned that she might receive a “red mark” on her attendance record because Day had marked the time slip “disapproved.” Holmes testified that he told Kaseta that management was not required to approve advance sick leave without any documentation. He nevertheless arranged a meeting that day between Supervisor Day, Kaseta, and himself. According to Holmes’ credible testimony, Day told Kaseta that if she submitted the medical documentation, the sick leave would be approved as scheduled leave. Day likewise testified that she told Kaseta and Holmes that she would give Kaseta scheduled leave if Kaseta brought in the documentation. (Tr. 191.) In contrast, Kaseta testified that she never met with Day and Holmes to discuss the sick leave request. For demeanor reasons, I credit the corroborative testimony of Holmes and Day.

On May 5, the day after she took sick leave, Kaseta returned to work and gave Day the medical documentation. According to Day’s un rebutted testimony, she whited out the term “disapproved” and retroactively approved the leave as she promised to do, even though the documentation was submitted late. (Tr. 193.) Day further testified that she never placed a red mark on Kaseta’s attendance record in the first place. There is no evidence to the contrary.

Holmes testified that he did not file a grievance because there was no contract violation and because he thought it was obvious from the discussion between he, Kaseta, and Supervisor Day that the matter had been resolved. (Tr. 227.) He further testified that after their meeting, Kaseta did not tell him that she wanted to pursue a grievance. In contrast, Kaseta testified that within the 2-week timeframe for filing a grievance, she asked Holmes about the status of filing a grievance. Kaseta stated that although Holmes stated he would look into it and get back to her, he never did. (Tr. 41.)

E. The EEO Complaint

On or about May 25, 1999, Kaseta requested an appointment with a Postal Service EEO counselor to discuss her concern that she was being treated differently by management because of her race and age. On June 9, 1999, Kaseta submitted an EEO information form to management which explained in writing the basis for her EEO concern. Although Kaseta indicated on the form that Chief Union Steward Georgia Butler would represent her in the EEO matter (GC Exh. 7), she had not previously discussed the EEO matter with Butler nor obtained Butler’s permission to list her as a representative.

Three weeks later, on June 24, Kaseta met with Butler to discuss other work-related complaints that Kaseta had pending against the Postal Service. In that meeting, Kaseta asked Butler if she would represent her in the EEO matter. Kaseta testified that Butler told her that she had a very hectic schedule and that she might not be able to do it. (Tr. 47.) Kaseta stated that But-

ler also told her that she would speak to Administrative Vice President (AVP) James Gettys about obtaining a representative. In contrast, Butler testified that she unequivocally told Kaseta on June 24 that she would not be able to represent her at the EEO meeting and explained why. (Tr. 313.) Butler stated that she told Kaseta to contact someone like AVP Gettys or Union Representative Glenn Berrien. Butler’s version of what was discussed was corroborated by Union Steward Holmes, who was present during the meeting.⁷ (Tr. 240.) Holmes testified that Butler told Kaseta that she would not be able to represent her and that she suggested other representatives that could help her. He recalled Butler mentioning AVP Gettys, Union Representative Deramus, and another individual named Glenn Berrien. For demeanor, and other reasons, I credit Butler’s testimony that she told Kaseta on June 24, 1999, that she would not be able to represent her in the EEO matter.

Kaseta did not advise the Postal Service that Butler would not be her representative. On Friday, August 6, 1999, Butler received a copy of a letter from the Postal Service EEO office to Kaseta advising that Kaseta’s EEO appointment was scheduled for August 12. On Monday, August 9, Butler wrote to Kaseta reiterating that, “I will not be able to represent you for your EEO appointment.” (GC Exh. 8.)

Kaseta received Butler’s letter on August 11.⁸ The next day, August 12, she rescheduled her EEO appointment for August 25, 1999. (Tr. 49–51.) Kaseta also complained to Union Steward Lewis that Butler failed to represent her in the EEO matter. He arranged a meeting for Kaseta to discuss the matter with AVP Gettys.

That night, Kaseta wrote a letter to Butler stating that she was disappointed because no one from the Union followed through with respect to her EEO appointment, which had to be rescheduled. The letter also stated that Kaseta had asked Union Representative Leroy Deramus to be her representative at the rescheduled EEO meeting and that he would be handling all of her future complaints and grievances. (GC Exh. 10.)

On August 25, Kaseta’s rescheduled EEO meeting took place. She was represented by Deramus, who continued to work on her EEO case. (Tr. 55.)

F. Kaseta’s Inability to Find a Union Representative

On August 14, Kaseta asked her supervisor, Natalie Day, for permission to see a union steward because Day refused to assign Kaseta to a tow motor driver position.⁹ Day phoned Union

⁷ Kaseta was unable to recall whether Butler was present at the June 24 meeting, but thought another union steward named “Loretta” was present in the union office. (Tr. 134.)

⁸ At first, Kaseta testified that she never received the Postal Service’s certified letter, dated August 6, that was mailed to her advising that her EEO appointment was scheduled for August 12. (Tr. 154.) However, on cross-examination, she was shown the return receipt card, dated August 16, and clarified her testimony by stating that she meant to state that she did not receive the Postal Service’s letter in time for the meeting. (Tr. 344.) For demeanor reasons, I find that her inaccurate testimony was not a mere oversight.

⁹ The complaint alleged that the incident took place on August 14, 1999. At trial, counsel for the General Counsel asserted that the incident actually took place on August 12. He therefore amended the complaint to substitute August 12 for August 14. On review of the record, I

⁶ Kaseta essentially corroborated Day’s testimony. She testified at trial that Day told her that she was disapproving the request for scheduled leave, but that she would approve in advance 4 hours of sick leave, if Kaseta provided the requisite medical documentation. (Tr. 124.)

Steward Lewis and asked him to come to the floor. When Bruce Lewis arrived, Kaseta explained the problem. Lewis told her that there was no contractual violation because it was within management's discretion to assign or not assign someone to drive the tow motor. (Tr. 137–138, 207.) When Kaseta insisted on filing a complaint against management, Lewis walked away.¹⁰

A short time later, Kaseta got permission from Day to go to the union office, even though Day told her that the union representative was unavailable. According to Kaseta, when she arrived at the union office the door was locked and the office was dark. (Tr. 58.) She paged Union Steward Lewis twice, but he did not respond. Kaseta went back to work. Kaseta testified that she returned to the union office every 15 minutes or so, knocked on the door, and got no answer. At lunchtime, she left a note for Lewis on the door of the union office.

Mail Handler Kenton Parker testified that shortly after 9 a.m. on August 14, he went to the union office to file a complaint. (Tr. 184.) A few days before, on August 6 and 7, Parker missed work because of car trouble. His request for 16 hours of annual leave was denied by his supervisor. On August 14, Parker went to see Lewis to file a grievance. He testified that he and Lewis spent about 2 hours that morning in the union office preparing a statement explaining the circumstances. Parker and Lewis then went to see Parker's supervisor in an attempt to resolve the matter, but were unable to do so. They returned to the union office to complete the paperwork and filed a grievance. Parker stated that during the entire time that he and Lewis were in the union office, Kaseta did not come by. (Tr. 185.)

After finishing with Parker, Lewis took a lunchbreak. Shortly before 2 p.m., he returned to the union office where he found the note from Kaseta expressing her displeasure with the fact that he was not available to meet with her. Lewis became very upset. He approached Kaseta who was working on the ramp with coworker Eric Short. Kaseta testified that Lewis called her a liar and told her that he had been working in the office. He told her that he was entitled to a lunchbreak. According to Kaseta, Lewis told her "that the union doesn't care about Vicky Kaseta and you can go ahead and do whatever you want to do because money is not coming out of my pocket." (Tr. 60; GC Exh. 14, p. 2.)

Lewis testified that Kaseta told him that she did not want him to represent her. He stated that she told him that he was a new steward, who did not know anything, so she would not want him to represent her anyway. (Tr. 218.) He testified that he responded by stating "if you don't want me to represent you, it's not like its taking money out of my pocket just because I

don't represent you, but the Union will represent you."¹¹ (Tr. 217.)

Short testified that Lewis appeared angry while Kaseta remained calm. He stated that as Lewis approached Kaseta, he called her a liar. Short recalled Lewis telling Kaseta that he was in the office most of the day, which Kaseta disputed. (Tr. 148.) Short testified that Lewis also told Kaseta that "he wasn't going to represent her. Something along the lines of the whole Post Office doesn't revolve around what Vicky's problems are and the whole world (sic) doesn't have to stop based upon what her problems are and what she is going through, along that line." (Tr. 150.) At that point, Lewis "stormed off." Short did not recall Lewis pulling his pockets out of his pants. (Tr. 151.)

I credit Kaseta's testimony that Lewis told her that the Union did not care what she did and it was not any money out of his pocket if he did not represent her. Her testimony to a large extent was corroborated by Short and is also consistent with a contemporaneous letter that she wrote to Local Union President Glenn Shelton on the day of the incident. (GC Exh. 12.) In contrast, Butler impressed me as someone with something to hide. He unpersuasively sought to downplay his emotional reaction to the situation. I find it more likely than not that Lewis scolded Kaseta out of anger and in the same vein told her that the Union did not care whether or not she was represented.

Ten minutes later, Lewis returned with a pass for Kaseta to go to the union office at 2:30 p.m. Lewis told her "here's your pass to the union office. I'll be here. You can feel free to come." (Tr. 218.) Kaseta looked at the pass and put it into her pocket. She testified that she did not go to the union office at 2:30 p.m. because she thought it would take more than 15 minutes to file a complaint and she did not want to use her washup time at the end of her shift (2:45–3 p.m.). (Tr. 63.) In addition, Kaseta testified that she did not go to the union office after 3 p.m. because she thought that she had to see the union steward on her tour and she was unsure whether Lewis would be in the union office after the tour ended. Lewis credibly testified that he waited in the office for Kaseta and that he would have remained beyond 3 p.m. to work on her complaint as he has done numerous times for other employees. (Tr. 219.)¹²

¹¹ Lewis sought to minimize the impression that he was upset by Kaseta's note. He denied that he raised his voice. Rather, he asserted that it was noisy on the ramp so he had to talk over the machinery in order to be heard. For demeanor reasons, I find this part of his testimony to be unconvincing.

¹² A great deal of extraneous testimony was presented at trial concerning phone conversations, meetings, and discussions that took place after August 14 between Kaseta and Union President Shelton or Kaseta and AVP Gettys concerning her complaints against Supervisor Day and Union Steward Lewis. I find that this evidence is not germane to the issue of whether or not Butler's statement to Kaseta on August 14 would have a reasonable tendency to restrain or coerce her in the exercise of statutory rights, including the right of access to the Board's processes. *Boilermakers Local 686*, 267 NLRB 1056, 1057 (1983). See also *Steelworkers Local 3029*, 250 NLRB 813 (1980) (the adequacy of Respondent's prior and subsequent representation of the charging party is irrelevant in determining the tendency of the statement to have a coercive effect).

find that the evidence viewed as a whole reflects that the incident in question occurred on Saturday, August 14, 1999. (Tr. 65, 184, 206–207; R. Exh. 5, pp. 1 and 3.)

¹⁰ In her direct testimony, Kaseta completely omitted the fact that Lewis came to the floor first thing in the morning, listened to her concerns, and explained to her that it was not a contract violation. Only on cross-examination did she give a complete account of what occurred on August 14, but testified that she could not recall if Lewis also told her that there was no contract violation. (Tr. 139.) Kaseta's failure to relay all of the facts on direct examination taints her credibility.

G. The Wastepaper Can Incident

Six days later, on August 20, Kaseta phoned Union Stewart Holmes from the work floor telling him that she wanted to file a complaint against Supervisor Day, as well as another complaint against Union Steward Lewis. Holmes asked her to come to the union office, where he gave her the requisite forms to complete. Kaseta filed a complaint against the Postal Service concerning Day's refusal to assign her to the tow motor driver position. (GC Exh. 11.) She also filed a complaint against Union Steward Lewis (GC Exh. 14) for unprofessional conduct on August 14. When Kaseta asked Holmes when a step-1 grievance meeting would be held, he told her he had to take it under advisement. There are two different versions of what occurred next.

According to Kaseta, as Holmes reviewed the completed forms, he mumbled something that sounded like "this is bullshit." Kaseta testified that she asked Holmes for a copy of the completed complaint forms, he told her he would bring it to her later. (Tr. 77.) Kaseta stated that she asked Holmes if she could wait for the copies, he told her, "No," and to get out of his office. Kaseta testified that as she turned to walk out of the office, she saw Holmes throw her complaints into the garbage can. (Tr. 78.)

At trial, Holmes acknowledged that Kaseta filed two complaints, one against Lewis and one against Supervisor Day. He testified that because he was not in a position to file a grievance under the collective-bargaining agreement against a fellow union officer, he informed her that he would take it under advisement, which meant that he would have to consult AVP Gettys. (Tr. 242.) Holmes testified that he took the complaints, told Kaseta that she could go back to work, and that he would bring her a copy. Holmes stated that he had to go to another office to make copies and that it was against union policy to leave someone alone in the union office. After he made copies, he brought a copy to Kaseta at her workstation. (Tr. 143.) Holmes denied telling Kaseta that the complaint about Lewis was bullshit. (Tr. 243.) He denied throwing her complaint in the garbage. He also denied telling Kaseta to get out of the office. For demeanor reasons, I credit Holmes version of what was discussed.

H. Shelton's October 1 Response to Kaseta

On September 20, 1999, Kaseta sent a letter to Union President Glenn Shelter complaining that she had not received requested copies of her union files and that no action had been taken on her complaint about Supervisor Day. Kaseta then focused on the confrontation with Union Steward Lewis on August 14. She wrote, "[t]he grievance against Mr. Lewis had better be addressed." (GC Exh. 18.) After acknowledging that AVP Gettys had met with her on August 28 to discuss the Day grievance and the Lewis grievance, Kaseta implied that Gettys had lied about speaking to coworker Eric Short about the August 14 confrontation. She accused the Union and management of conspiring against her, which resulted in her losing grievances at steps 1 and 3. In the penultimate paragraph of the letter, Kaseta stated:

This union at the GMF has been given enough time to correct their wrong doings. I have stated before you all work for me. Because of my color, race and what I represent wrongdoings are still being done to me. Therefore, I have taken my complaints elsewhere.¹³

On the same date, September 20, Kaseta sent a separate letter to AVP James Gettys, raising several questions and concerns about the bidding procedure followed by the Postal Service. The letter stated that management had eliminated certain positions and questioned why an updated seniority list had not been issued.¹⁴ (R. Exh. 9.)

By letter, dated October 1, 1999, Shelton acknowledged receipt of the September 20 letter, and assured Kaseta that he was not ignoring her concerns.¹⁵ With respect to her complaints about Union Steward Lewis and the Union's level of representation, Shelton responded that "Local 307 has been instructed by our counsel to refrain from answering the accusations in your letter until your NLRB charge has been resolved." (GC Exh. 19.) The letter stated, however, that the files Kaseta requested were being complied and that she would be notified when they were ready. (Tr. 104.)

I. Updating Kaseta on the Status of her Grievance

On September 15, Kaseta received a 14-day suspension notice purportedly for taking a smoking break when she should have been at her workstation. (GC Exh. 16.) She gave the suspension notice to Union Steward Holmes and filed a complaint against the Postal Service. Kaseta, however, did not inform Holmes that she was transferring from the downtown Detroit general mail facility to the airmail facility at the airport. (Tr. 230.) When he learned indirectly that Kaseta was transferring, Holmes attempted to schedule the step-1 meeting before she transferred to other location.

On September 22, Holmes scheduled a step-1 meeting with Kaseta's supervisor for the following day, September 23, without telling Kaseta.¹⁶ He testified that he assumed she would be at work on September 23 and that her supervisor would send her to the step-1 meeting, which is normally how grievance meetings are facilitated. Unfortunately, Kaseta was off sick on September 23, her last day at the downtown facility, and was

¹³ Four days earlier, on September 16, 1999, Kaseta filed a charge with the Board's Regional Office concerning essentially the same criticism of the Union that she addressed in this letter. (GC Exh. 1(a).) Thus, the evidence supports a reasonable inference that the statement, "I have taken my complaints elsewhere," refers to the charge that she filed.

¹⁴ Gettys responded to Kaseta by letter, dated September 30, 1999, effectively addressing in detail all of the issues raised in her letter. (R. Exh. 12.)

¹⁵ Inexplicably, Shelton sent Kaseta another letter, dated October 6, 1999, stating that he did not receive a September 20 letter from Kaseta, but instead was given a copy of that letter by AVP Gettys. (R. Exh. 23.) In addition, Shelton reiterated that union counsel had instructed him to refrain from responding until her NLRB charge has been resolved and that her files were being complied and would be provided.

¹⁶ Kaseta testified that between September 15 and 25, she asked Holmes several times when her step-1 meeting would be held, but he never gave her an answer. (Tr. 93.)

scheduled to start her new job at the airmail facility on September 25. The step-1 meeting, therefore, had to be postponed.

Because the deadline for scheduling the grievance meeting was September 29, Holmes phoned Kaseta at home on September 27 asking for written authorization to hold a step-1 meeting without her. Kaseta declined to waive her right to be present at the step-1 meeting. Holmes testified that when he explained to Kaseta that he needed to hold a step-1 meeting as soon as possible, she became angry and hung up the phone. (Tr. 94.) A few minutes later, Kaseta called back asking Holmes to send her a letter stating when and where her step-1 meeting would be held.

Holmes therefore consulted Chief Union Steward Butler. She told him to keep the grievance timely by having the step 1 without Kaseta, which he did, even though he knew that she had a right and had expressed a desire to be present.¹⁷ (Tr. 249–250.) The next day, Butler phoned Kaseta at the airmail facility to explain why they were proceeding with the step-1 meeting. Kaseta testified that she did not take Butler's phone call because she was taking her lunchbreak. At the end of her lunch period, Kaseta phoned the union office and spoke to Holmes, who told her that the step-1 meeting would take place the next day no matter what. Kaseta asked him to let her know the time so she could attend. Although Holmes told her he would get back to her with the time, he never did.

The step-1 meeting was held the next day without Kaseta. The discipline was reduced from a 14-day to a 7-day suspension, which Holmes considered unacceptable. He therefore submitted the grievance to step 2. About 2 weeks later, Holmes notified Kaseta of the outcome of the step-1 meeting by leaving a message on her answering machine at home. (Tr. 97, 99.)

Kaseta subsequently phoned Local Union President Shelton complaining that her rights had been violated because she was not permitted to attend the step-1 meeting. Eventually, the grievance was remanded to step 1 and redone with Kaseta present. The result was the same. The grievance was appealed by the Union and eventually the disciplinary action was fully rescinded. (GC Exh. 17A.)¹⁸

J. Charging Kaseta for Photocopies of Documents

By letter of August 22, 1999, Kaseta summarized the content of a telephone conversation she had earlier that day with Local Union President Shelton concerning the conduct and performance of local union stewards, including Union Steward Lewis and Chief Union Steward Butler. (GC Exh. 15.) The letter also pointed out that Kaseta had made a written request for copies of her union files for the past 6 months and that Shelton told Kaseta that her request and that in the interest of time her spe-

cific request for "a December 9, 1998, Letter of Warning and the April 19, 1999 Letter of Suspension would be sent to me by certified mail in a speedy manner."

One month later, on September 20, Kaseta wrote again to Shelton stating:

This letter is a follow-up to my letter dated August 22, 1999. I had requested copies of all my union files for the past six months. But because of the length of time needed I requested the files for December 9, 1998 and April 19, 1999 be sent as soon as possible.

(GC Exh. 18.)

On October 1, Shelton responded to the September 20 letter stating, among other things, "I have received your letter of September 20, 1999, and write to assure you that I am not ignoring it . . . [w]e are compiling your files and will let you know as soon as they are ready for you either to pick up from the Union hall or from your AVP, James Gettys, whichever is more convenient for you." (GC Exh. 19.)

On October 4, Kaseta wrote to Shelton again stating, "I have written two letters¹⁹ requesting my union files. To date you and your office have not complied! In accordance with the Freedom of Information Act and the Privacy Act I am hereby requesting all grievances, complaints, notes and memos in my file since December 1, 1998, in ten (10) days. If my request is not made legal litigation will follow." (GC Exh. 22.)

By letter of October 6, Shelton replied that he did not receive Kaseta's September 20 letter directly, but was given a copy by Gettys. The balance of the letter reiterated what was stated in Shelton's October 1 letter, including "[w]e are compiling your files and will let you know as soon as they are ready for you either to pick up from the Union hall or from your AVP, James Gettys, whichever is more convenient for you." (GC Exh. 23.)

On October 13, 1999, Shelton advised Kaseta that the files were ready to inspect, but she would have to pay for copying. Specifically, it stated:

Your grievance files are ready for you to inspect. You may request copies at \$.10 per page, or you simply request copies of all grievance material and we will prepare the appropriate copying bill. The Freedom of Information Act does not apply to labor organizations. We are providing you access to your official grievance file materials just as we provide to all other bargaining unit employees. Please call the office and make an appointment to review and/or pick up your grievance files. Thank you.

(R. Exh. 15)

III. ANALYSIS AND FINDINGS

A. The Applicable Legal Standard

In *Letter Carriers Branch 529*, 319 NLRB 879, 881 (1195), the Board stated the broad legal standard that governs this case.

¹⁷ Butler testified that Holmes told her that he was running out of time on the grievance (Tr. 337) and based on that she "assumed" that he had obtained one extension and did not want to ask for another because he was concerned it would affect the outcome. (Tr. 334.) In reality, Holmes had not sought an extension of time to hold the step-1 grievance. (Tr. 249.) He merely had postponed the previously arranged step-1 meeting to a date within the contractual time limits.

¹⁸ Kaseta testified that the grievance was appealed to step 2 where Union Steward Kromer succeeded in having the suspension completely rescinded. (Tr. 174.)

¹⁹ Kaseta was referring to her letters of August 22 and September 20, 1999 (GC Exhs. 15 and 18) in which she asked for her union file and certain grievance documents.

A union owes all unit employees the duty of fair representation, which extends to all functions of the bargaining representative. When a union's conduct toward a unit member is arbitrary, discriminatory, or in bad faith, it breaches its duty of fair representation. But a union must be allowed a wide range of reasonableness in serving the unit employees, and any subsequent examination of a union's performance must be "highly deferential." Mere negligence does not constitute a breach of the duty of fair representation. And a union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational. [Footnotes omitted.]

B. The Alleged Refusal to Process the 7-Day Suspension Grievance

Paragraph 8(a) of the complaint alleges that in May 1999 the Union refused to process Kaseta's grievance concerning her 7-day suspension. The undisputed evidence shows that the allegation is completely false. The Union pursued the grievance from step 1 through step 3, and obtained a step-3 settlement which removed the disciplinary action from Kaseta's record after October 30, 1999, provided she incurred no infractions resulting in discipline between July 23–October 30, 1999. There is no evidence that the 7-day suspension was not removed from her file on or after October 30.

Kaseta essentially admitted at trial that the Union did not refuse to process her grievance as alleged in the complaint. (Tr. 116.) Rather, she testified that the gravamen of her complaint was that (1) she did not participate in the step-2 and step-3 meetings; (2) she requested, but did not receive documents pertaining to the steps-1 and -2 outcomes; and (3) she was unable to obtain an explanation of the settlement from the Union. The undisputed evidence shows that an employee, like Kaseta, does not have a right to be present at a steps-2 and -3 grievance meeting, and that under the contract the union representative (either a local union steward or regional union representative) has full authority to resolve the grievance. The un rebutted evidence shows that Kaseta was present at the step-1 meeting and therefore knew the substance of the discussion, the outcome of the meeting, and the fact that the grievance was being pursued to step 2. While there is no evidence that Kaseta was kept abreast of the step-2 outcome, there is no evidence that she was prejudiced in anyway by this omission.

In addition, the credible evidence shows that Kaseta was provided a copy of the step-3 settlement in a timely fashion (Tr. 30, 33) and that Kaseta spoke to AVP Gettys about not being completely satisfied with the step-3 outcome. (Tr. 299.) Gettys credibly testified that he explained to Kaseta that once a grievance is pursued to step 3, it is out of the local union's hands. Gettys stated that he nevertheless phoned the union representative, Dawson Lewis, who handled Kaseta's case, and was told by Dawson that although he attempted to obtain a complete rescission of the disciplinary action, the best he could do under the circumstances was a conditional rescission. (Tr. 300.)

Thus, there is no evidence that the Union's conduct was arbitrary, discriminatory, or that it acted in bad faith. Accordingly,

I shall recommend that the allegations contained in paragraph 8(a) of the complaint be dismissed.

C. The Alleged Refusal to Process Kaseta's Sick Leave Grievance

Paragraph 8(b) of the complaint alleges that on or about May 16, 1999, the Union refused to process a grievance for Kaseta concerning the denial of sick leave by the Postal Service. The undisputed evidence shows that Kaseta was not denied sick leave. Rather, on or about May 5, Supervisor Day retroactively approved 4 hours of sick leave for Kaseta for May 4, even though Kaseta provided the prerequisite medical documentation after her dental appointment. Also, the evidence shows that Day explained to Kaseta on or about May 1 in the presence of Holmes that she would approve Kaseta's advanced sick leave request if she brought in the necessary medical documentation as required by the Postal Service's ELM. There is no evidence that Kaseta's attendance record was adversely affected in any way (Tr. 40, 42) or that the Postal Service violated the collective-bargaining agreement.

Counsel for the General Counsel does not dispute that Kaseta's attendance record was not adversely affected or that she did not receive any discipline. Rather, he argues on page 5 of his posthearing brief that the failure of Holmes to "get back to Kaseta" about the status of filing a grievance is a violation of the Act.²⁰ I do not agree. While Holmes should not have assumed that Kaseta understood that the matter had been satisfactorily resolved, the evidence shows that Kaseta did not follow through on the matter by asking her supervisor if a red mark had been placed in her record or by checking her attendance record herself, which she could have done. The evidence as a whole does not establish that the Respondent's conduct was arbitrary, discriminatory, or in bad faith.

Accordingly, I shall recommend the dismissal of the allegations in paragraph 8(b) of the complaint.

D. The Alleged Refusal of Georgia Butler to Assist Kaseta with an EEO Complaint

Paragraph 8(c) of the complaint alleges that on August 11, 1999, Chief Union Steward Georgia Butler refused to assist Kaseta with an EEO complaint against the Postal Service. The credible evidence shows that Butler told Kaseta on June 24 that she would be unable to represent her at the EEO meeting and gave her the names of other union representatives who were qualified to handle an EEO matter. At that time, Kaseta mentioned Leroy Deramus, and Butler told her that he was capable of handling an EEO matter. Butler credibly denied telling Kaseta that the Union would not represent her. (Tr. 316.) Butler's testimony is corroborated by Union Steward Holmes.

²⁰ At the hearing, Kaseta also testified that she was upset because ultimately she was given only 4 hours of approved sick leave for a dental appointment, rather than 8 hours. She stated that a week earlier another employee received a full 8 hours of sick leave for a dental appointment. Counsel for the General Counsel does not address this issue in his brief nor is there any credible evidence in the record showing that employees typically were allowed 8 hours sick leave for medical/dental appointments, while Kaseta was denied the same treatment.

The evidence also shows that Kaseta was not prejudiced by Butler's inability to represent her at the EEO meeting. Kaseta rescheduled the meeting and contacted Deramus, who represented her at the EEO meeting on August 25 and continued to represent her in that matter.

Thus, the evidence viewed as a whole shows that Chief Union Steward Butler did not refuse to assist Kaseta with her EEO matter on August 11, but had told her on June 24 that she would not be able to represent her and why. Accordingly, I shall recommend that the allegations of paragraph 8(c) of the complaint be dismissed.

E. The Alleged Refusal by Union Steward Lewis to Meet with Kaseta on August 14, 1999, and the Remark that it Would be Futile to File a Grievance

Paragraph 8(d) of the complaint alleges that on August 14, 1999, Union Steward Bruce Lewis refused to meet with Kaseta about a potential grievance by leaving his office and evading her when she came to the union office. The credible evidence shows that Lewis met with her on the work floor in the early morning of August 14 to discuss her complaint and to explain why there was no contractual violation. (Tr. 137–138.) The credible evidence also shows that Lewis was in the union office for the greater part of the morning with another employee, Kenton Parker, working on Parker's grievance. Parker credibly testified that during this time no one, including Kaseta, came to the union office. While it is conceivable that Kaseta went to the union office when Lewis and Parker were meeting with his supervisor or photocopying Parker's records, there is no evidence that Lewis was aware that Kaseta was trying to reach him or that he was intentionally attempting to avoid Kaseta. Although Kaseta testified that she paged Lewis, his un rebutted testimony is that there is no speaker in the union office and that he cannot hear the speakers on the floor when the union office door is closed.

Accordingly, I shall recommend that the allegations of paragraph 8(d) be dismissed.

Paragraph 8(e) of the complaint alleges that on the same date Lewis told Kaseta that it would be futile for her to file any grievances because the Union did not like her. The credible evidence shows that Lewis told Kaseta "that the union doesn't care about Vicky Kaseta and you can go ahead and do whatever you want to do because money is not coming out of my pocket." On its face the statement could be reasonably construed to mean that the Union would not support Kaseta if she persisted in filing a grievance. It further reflects hostility toward Kaseta which may have a reasonable tendency to discourage Kaseta and the other employee present, Eric Short, from seeking union representation or filing a grievance. However, I find that the implication that filing a grievance would be futile was dispelled almost immediately when Lewis returned 10 minutes later with a pass from Kaseta's supervisor authorizing her to go to the union office at 2:30 p.m. to fill out a complaint. It was also dispelled by Lewis' statement to Kaseta in the presence of Short "here's your pass to the Union office. I'll be here. You can feel free to come." (Tr. 218.) See *Teamster Local 279*, 218 NLRB 1392 (1975).

Accordingly, I shall recommend that paragraph 8(e) of the complaint be dismissed.

F. The Alleged Refusal by Holmes to Process Kaseta's Complaints Against Lewis and Day

Paragraph 8(f) of the complaint alleges that on August 20, 1999, Union Steward Holmes refused to process a grievance from Kaseta, ordered her to leave the office, and threw the paperwork in the trash. The undisputed evidence shows that Kaseta told Holmes on the phone that she wanted to file a complaint against Supervisor Day and a complaint against Union Steward Lewis. It further shows that even though he knew what the complaints involved, he told her to come to the union office, gave her the necessary forms to complete, reviewed them in her presence, subsequently provided her with copies,²¹ and referred both complaints to AVP Gettys for further investigation. Holmes credibly explained that there is no provision under the collective-bargaining agreement for processing a complaint against a union steward so he referred the matter to his superior, which was AVP Gettys.

The evidence shows that a week later, on August 28, Gettys met with Kaseta and Lewis, lectured them about being respectful to each other, and explained why Day did not violate the contract by not assigning Kaseta to the driver position.²² The credible evidence also shows that Gettys told her that there was no grievance against Lewis under the collective-bargaining agreement, but that he would review the matter to determine the extent, if any, of any improprieties.

Thus, the evidence falls short of showing that Holmes refused to process Kaseta's complaints on August 20, 1999, or that he threw her complaints in the trash. Rather, the credible evidence shows that Holmes did none of the above and that he articulated legitimate reasons for referring the grievances to AVP Gettys. Accordingly, I shall recommend that the allegations of paragraph 8(f) be dismissed.

G. The Alleged Refusal to Respond to Kaseta Complaints About Working Conditions at the Detroit GMF

Paragraph 8(g) of the complaint alleges that on or about September 20, 1999, Union President Shelton unlawfully refused to address Kaseta's concerns about working conditions at the downtown Detroit general mail facility because she filed a ULP charge. On its face, the allegation is factually inaccurate. First, there is no evidence that Shelton communicated with Kaseta on or about September 20. Rather, the evidence shows that on September 20, Kaseta wrote to Shelton. (GC Exh. 18.) Second, a fair reading of Kaseta's September 20 letter reflects that it does not address working conditions. Kaseta makes only a passing reference to her grievance against Supervisor Day re-

²¹ The fact that Holmes provided Kaseta copies of her complaint, as promised, makes it unlikely that he threw the complaints in the trash.

²² Kaseta denied that Gettys explained that there was no contract violation concerning the driver assignment and further denied that Gettys told her that there was no grievance against Lewis under the collective bargaining agreement. (Tr. 144–146.) For demeanor reasons, I credit Gettys' testimony on this point.

garding the tow motor assignment.²³ Instead, the principal focus of the letter is on Kaseta's grievance against Lewis and her accusations of a conspiracy between the Union and management against her. In the penultimate paragraph, Kaseta unequivocally states that "[t]his union at the GMF has been given enough time to correct their wrong doings. . . . Therefore, I have taken my complaints elsewhere." I find that the latter is an obvious reference to the charge filed by Kaseta on September 16 against the Union.

The evidence shows that on October 1, Shelton responded to Kaseta's September 20 letter telling her that "Local 307 has been instructed by our counsel to refrain from answering the accusations in your [September 20] letter until your NLRB charge has been resolved." (GC Exh. 19.) Shelton informed Kaseta that the files she had requested were being compiled and that she would be notified as soon as they were ready.

I find that a fair reading of incoming and outgoing letters does not show that Shelton refused to answer any inquiry by Kaseta about working conditions as alleged in paragraph 8(g) of the complaint.

The evidence does show, however, that on September 20, 1999, Kaseta wrote a letter to AVP Gettys expressing her concerns about the bidding procedures (i.e., working conditions) at the downtown Detroit GMF. (R. Exh. 9.) Notwithstanding the fact that a charge had been filed against the Union, Gettys responded to those concerns in detail by letter, dated September 30. (R. Exh. 12.) This evidence lends credence to Shelton's testimony that he was not refusing to answer questions about Kaseta's working condition, but was refusing to answer accusations about union representation which were part of her Board charge. (Tr. 276.)

Notwithstanding the above evidence, Counsel for the General Counsel inexplicably argues at page 9 of his posthearing brief that "the Union's refus[ed] to respond to CP's concerns about bidding procedures as set forth in her August 22 letter because she had filed a ULP charge." First, the argument is totally inconsistent with the inaccurate allegation in paragraph 8(g) which designates September 20 as the operative date. Second, it totally ignores the credible evidence showing that the Union did respond in detail to Kaseta's concerns about the bidding procedure.

Accordingly, I shall recommend the dismissal of the allegations contained in paragraph 8(g) of the complaint.

H. The Unlawful Refusal to Advise Kaseta of the Time of her Step-1 Grievance

Paragraph 8(h) of the complaint alleges on September 28, 1999, Union Steward Holmes refused to properly advise Kaseta of the date and time of a step-1 grievance regarding the 14-day suspension that she received on September 15. The undisputed evidence discloses that Kaseta had a right to be present at the step-1 meeting, that she had refused to waive that right, and that she insisted on being present at the step-1 meeting. (Tr. 249-250.) The un rebutted evidence further shows that on Septem-

ber 29 Kaseta spoke with Holmes on the phone at which time he told her that the step-1 meeting would be held the next day no matter what.²⁴ (GC Exh. 20.) When Kaseta asked Holmes what time would the step-1 meeting be held, he told her that he would not know the time of the meeting until after he spoken with the Postal Service supervisor. The un rebutted evidence shows that Kaseta asked Holmes to call her back with the time of the meeting, but he never did. The next day, Holmes held the step-1 grievance meeting without Kaseta, even though he knew that she wanted to be there. (Tr. 250.)

Holmes did not explain why he never called Kaseta back with the time of the step-1 meeting. He also did not explain why he did not request an extension of time to hold the meeting. Rather, he testified that he knew that Kaseta wanted to attend the step-1 meeting, but nevertheless went ahead with the meeting without her. Under the circumstances, I find that his conduct was outside a wide range of reasonableness so as to be irrational. *Letter Carriers Branch 529*, 319 NLRB 881 (1995).

In addition, there is no evidence, nor argument, that Holmes inadvertently failed to advise Kaseta of the time of the step-1 meeting. Thus, the evidence supports a reasonable inference that his failure to notify Kaseta was willful. The Board has stated that a union's duty of fair representation includes the duty to neither willfully misinform employees about their grievances nor to willfully keep them uninformed. *Postal Workers Union*, 328 NLRB 281, 282 (1999).

Accordingly, I find that Holmes violated Section 8(b)(1)(A) of the Act by willfully denying her the right to attend her step-1 grievance.

I. The Arbitrary and Disparate Treatment of Kaseta

Paragraph 8(i) of the complaint alleges that on or about October 13, 1999, Union President Shelton disparately and arbitrarily required Kaseta to pay for photocopies of the union files that she had requested. I agree. First, there is no evidence that the Union had an established policy of charging members for copies of their files, duplicate or otherwise. Shelton testified that he never made a general announcement to the union membership or made it known to the local union stewards that there would be a charge for duplicate copies of files. (Tr. 285.) Second, there is no evidence that the Union has charged other members for photocopies of union files or duplicates of them. Rather, the only evidence of anyone being charged is Kaseta. Finally, the Union's explanation that it charged Kaseta's request for files because it was a duplication of files that were previously provided is unsupported by the evidence. Rather, the undisputed evidence shows that in 1997, Kaseta requested a copy of all her complaints and grievances from October 1995 to February 3, 1997. (R. Exh. 31.) In January 1999, she asked for copies of unspecified past complaints and grievances filed prior to January 1999. (Tr. 162; R. Exh. 32.) When the Union did not provide those files by February 8, 1999, Kaseta filed a complaint protesting the Union's untimely delay in providing the documents. (R. Exh. 33.) Butler admitted that there was a delay in providing the latter files, which she attributed to the

²³ The credible evidence shows that on August 28, 1999, AVP Gettys explained to Kaseta that there was no contract violation giving rise to a grievance against Supervisor Day. (Tr. 296.)

²⁴ Holmes testified that he never requested an extension of time to hold the step-1 meeting. (Tr. 249.)

relocation of the Union's offices. (Tr. 326.) Although Butler testified that those files (i.e., those sought by Kaseta in her February 16, 1999 complaint) were provided to Kaseta, Kaseta denied receiving these files from the Union. (Tr. 324, 340.) For demeanor reasons, I credit Butler's testimony on this point. Thus, the evidence shows that Kaseta requested and was provided complaints and files up to January 1999.

The evidence also unequivocally shows that the files sought by Kaseta in her August 22 letter to Shelton were "for the past six months" (i.e., March–August 1999) with the exception of a December 9, 1998 Letter of Warning. (GC Exh. 15.) The request was reiterated in the opening paragraph of her September 20 letter to Shelton in which Kaseta stated, "This is a follow-up to my letter of August 22, 1999. I had requested copies of all my union files for the past six months." (GC Exh. 18.) There is no evidence that Kaseta was provided with a copy of her files for the period March–August 1999, and therefore, there is no evidence that her recent request was duplicative of an earlier request. Thus, I find that even if there was evidence that the Union had a policy of charging members for duplicative requests for files, which there is not, Kaseta's request did not fall into that category.

Accordingly, I find that the Union violated Section 8(b)(1)(A) of the Act by arbitrarily and disparately charging Kaseta for photocopies of the files she requested in her August 22, 1999 letter to Shelton.

CONCLUSIONS OF LAW

1. The United States Postal Service (Postal Service) is subject to the jurisdiction of the National Labor Relations Board pursuant to 39 U.S.C. § 1209(a).

2. Local 307, National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL–CIO (U.S. Postal Service) is a labor organization within the meaning of Section 2(5) of the Act.

3. Local 307 has violated Section 8(b)(1)(A) of the Act by failing to inform Vicky Lynn Kaseta of the time of a step-1 grievance meeting and by charging her for photocopies of her union files, including disciplinary actions taken against her by the Postal Service, and complaints and grievances that she has filed against the Postal Service.

4. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not engaged in any unfair labor practice not specifically found here.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Respondent provide Vicky Lynn Kaseta with copies of her union files for the period of March to August 1999, inclusive, as well as a copy of a December 9, 1998 warning letter and reimburse her for all monies, if any, paid by Vicky Lynn Kaseta to the Respondent in order to obtain the copies, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁵

ORDER

The Respondent, Local 307, National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL–CIO (Local 307), its officers, agents, and representatives shall

1. Cease and desist from

(a) Refusing to inform Vicky Lynn Kaseta of the time of her step-1 grievance meeting.

(b) Charging Vicky Lynn Kaseta for photocopies of her union files.

(c) In any like or related manner restraining or coercing Vicky Lynn Kaseta or any other employee in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Vicky Lynn Kaseta with copies of her union files for the period of March to August 1999, inclusive, as well as a copy of a December 9, 1998 warning letter.

(b) Reimburse Vicky Lynn Kaseta for all moneys, if any, paid by Vicky Lynn Kaseta to the Respondent in order to obtain copies of her union files for the aforesaid period, plus interest as computed in accordance with the remedy above.

(c) Within 14 days after service by the Region, post at its union offices and hiring halls in Detroit, Michigan, copies of the attached notice marked "Appendix."²⁶ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 28, 1999.

(d) Furnish signed copies of the notice to the Regional Director of Region 7 for posting by the United States Postal Service, if willing, at all locations in the Detroit, Michigan metropolitan area, where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

²⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."